

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JASON MOORE, individually,

Plaintiff,

v.

EFFECTUAL INC., a Delaware
corporation,

Defendant.

CASE NO. 3:21-cv-05890-DGE

ORDER GRANTING IN PART
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT (DKT.
NO. 16) AND DISMISSING
PLAINTIFF’S SUPPLEMENTAL
CLAIMS

I INTRODUCTION

This matter comes before the Court on Defendant Effectual Inc.’s motion for summary judgment (Dkt. No. 16). For the reasons herein, the Court GRANTS Defendant’s motion as to Plaintiff Jason Moore’s Title VII claim and DISMISSES Plaintiff’s state law claims without prejudice.

II BACKGROUND

In August 2021, Plaintiff was hired as an Enterprise Account Executive at Defendant, with an effective start date of October 4, 2021. (Dkt. Nos. 1 at 2; 18 at 2.) On October 5, 2021,

1 Defendant's employee Rick Ruskin announced that he believed the company was adopting a
2 mandatory vaccination policy against Covid-19, requiring all employees be vaccinated by the
3 end of November 2021. (Dkt. Nos. 1 at 2; 18 at 2–3.) On October 8, 2021, another of
4 Defendant's employees Alexis Breslin sent a company-wide emailing detailing Defendant's new
5 vaccine policy, including the process to request medical and religious accommodations. (*See*
6 Dkt. Nos. 19-1, 19-2.) Plaintiff ultimately refused to get vaccinated. (Dkt. No. 22 at 2–4.) The
7 Parties dispute whether Plaintiff properly requested a religious exemption to the company's
8 vaccine policy prior to his termination. (*See* Dkt. Nos. 19 at 2–5; 22 at 2–7.)

9 Plaintiff filed suit against Defendant on December 8, 2021, alleging Defendant violated
10 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"), the
11 Washington Law Against Discrimination, Washington Revised Code §§ 49.60, *et seq.*
12 ("WLAD"), and committed breach of contract and wrongful discharge in violation of public
13 policy. (*See* Dkt. No. 1 at 3.) Plaintiff did not contact the Equal Employment Opportunity
14 Commission ("EEOC") or file a Charge of Discrimination with them prior to filing his
15 complaint. (Dkt. No. 17-2 at 18–19, 106.)

16 On November 17, 2022, Defendant filed their motion for summary judgment. Plaintiff
17 filed a timely response in opposition to Defendant's motion on December 5, 2022. And
18 Defendant filed its reply on December 9, 2022.

19 III DISCUSSION

20 A. Legal Standard

21 A court "shall grant summary judgment if the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.
23 R. Civ. P. 56(a). "The deciding court must view the evidence, including all reasonable
24

1 inferences, in favor of the non-moving party.” *Reed v. Lieurance*, 863 F.3d 1196, 1204 (9th Cir.
2 2017). “Only disputes over facts that might affect the outcome of the suit under the governing
3 law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant
4 or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
5 Additionally, the moving party may meet their summary judgment burden by establishing
6 through argument that the non-movant has failed to offer any evidence in support of their claims.
7 *Garnica v. Washington Dep’t of Corr.*, 965 F. Supp. 2d 1250, 1263 (W.D. Wash. 2013), *aff’d*,
8 639 F. App’x 484 (9th Cir. 2016); *see also Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528,
9 532 (9th Cir. 2000); Fed. R. Civ. P. 56(e)(3).

10 **B. Plaintiff Failed to Exhaust His Administrative Remedies, as Required by Title VII**

11 Defendant argues Plaintiff failed to exhaust his administrative remedies by filing a
12 Charge of Discrimination with the EEOC and thus is precluded from bringing a religious
13 discrimination claim pursuant to Title VII. (Dkt. No. 16 at 13–14.)

14 Plaintiff does not respond to Defendant’s arguments as to his Title VII claim. (*See*
15 *generally* Dkt. No. 20.) The Court thus construes Plaintiff’s Title VII claim as waived. *See*
16 *Washburn v. Gymboree Retail Stores, Inc.*, No. C11-822RSL, 2012 WL 3818540, at *10 (W.D.
17 Wash. Sept. 4, 2012); *see also Ramirez v. City of Buena Park*, 560 F.3d 1012, 1026 (9th Cir.
18 2009) (“‘It is a general rule that a party cannot revisit theories that it raises but abandons at
19 summary judgment.’”).

20 Even had Plaintiff not waived his Title VII claim by failing to respond to Defendant’s
21 arguments, the Court would find that Plaintiff failed to exhaust his administrative remedies
22 before bringing a Title VII claim against Defendant. “In order to bring a Title VII claim in
23 district court, a plaintiff must first exhaust her administrative remedies.” *Sommatino v. United*

1 *States*, 255 F.3d 704, 707 (9th Cir. 2001). Plaintiff was required by federal regulation to “file a
 2 charge with the EEOC within either 180 days or 300 days of the alleged unlawful employment
 3 practice.” *Salina v. Providence Hospice of Seattle*, No. C02-2559RSM, 2005 WL 5912105, at
 4 *2 (W.D. Wash. Apr. 11, 2005), *aff’d*, 226 F. App’x 653 (9th Cir. 2007); *see also* 42 U.S.C. §
 5 2000e-5(e)(1). Plaintiff explicitly acknowledges they failed to do so. (Dkt. No. 17-2 at 18–19,
 6 106.)

7 “Our cases . . . instruct that abandonment or failure to cooperate in the administrative
 8 process prevents exhaustion and precludes judicial review.” *Sommatino*, 255 F.3d at 708.
 9 Plaintiff failed to exhaust his administrative remedies and has prevented no evidence that either
 10 he or his counsel consulted with the EEOC prior to filing this lawsuit. As such, the Court
 11 GRANTS Defendant’s summary judgment motion as to Plaintiff’s Title VII claim.

12 **C. The Court Declines to Exert Jurisdiction over Plaintiff’s Supplemental State Law** 13 **Claims**

14 The Court declines to exert supplemental jurisdiction over Plaintiff’s other state law
 15 claims. *See Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) (“A court may decline to exercise
 16 supplemental jurisdiction over related state-law claims once it has ‘dismissed all claims over
 17 which it has original jurisdiction.’”); *see also* 28 U.S.C. § 1367(c)(3).

18 Plaintiff’s complaint does not specify the basis for the Court’s jurisdiction to hear this
 19 case. (Dkt. No. 1 at 1.) Plaintiff generally asserts, “[t]he Court has jurisdiction over the parties
 20 to, the subject matter of this lawsuit, and venue is proper.” (*Id.*) The Court undoubtedly had
 21 jurisdiction over Plaintiff’s Title VII claim pursuant to 28 U.S.C. § 1331. It is not clear whether
 22 the Court has diversity jurisdiction over Plaintiff’s state law claims because Plaintiff did not
 23 affirmatively plead the amount in controversy was over \$75,000. *See* 28 U.S.C. § 1332. The
 24 burden of proving jurisdiction rests on the party asserting it. *See Kokkonen v. Guardian Life Ins.*

1 *Co. of Am.*, 511 U.S. 375, 377 (1994). The Court is not persuaded it has original jurisdiction
2 over Plaintiff's state law claims and declines to exert supplemental jurisdiction over them.

3 As such, the Court DISMISSES these claims without prejudice.

4 **IV CONCLUSION**

5 Accordingly, and having considered Defendant's motion (Dkt. No. 16), the briefing of
6 the parties, and the remainder of the record, the Court finds and ORDERS that Defendant's
7 motion is GRANTED in part.

8 1. The Court GRANTS Defendant's motion for summary judgment as to Plaintiff's
9 Title VII claim and the Title VII claim is DISMISSED with prejudice.

10 2. The Court DISMISSES without prejudice Plaintiff's state law claims for lack of
11 subject matter jurisdiction.

12 3. The Court declines to award sanctions for alleged discovery violations as a proper
13 motion is not before the Court.

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15 Dated this 19th day of December, 2022.

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David G. Estudillo
United States District Judge